

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

JAMES R. MOYSEY, JR.

PLAINTIFF

VS.

CIVIL ACTION NO. 3:21-cv-00473-KHJ-MTP

BMR TRANSPORT, LLC AND
RICHARD B. COOK

DEFENDANTS

NOTICE OF REMOVAL

TO: Graham P Carner
Graham P Carner PLLC
775 N Congress St
Jackson, MS 39202-3009

James C. Helveston
Edwards, Storey, Marshall, Helveston & Easterling, LLP
PO Box 835
West Point, MS, 39773

Witt Fortenberry, Clerk
Simpson County Circuit Court
Post Office Box 307
Mendenhall, MS 39114

Pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446, BMR Transport and Richard Cook (“Defendants”) gives Notice of Removal of this civil action from the Circuit Court of Simpson County, Mississippi, to the United States District Court for the Southern District of Mississippi, Northern Division. In support of this removal, Defendants respectfully submit as follows:

1. The Plaintiff, James Moysey, Jr., filed his Complaint on or about April 1, 2021, in the Circuit Court of Simpson County, Mississippi (“the State Court Action”). The Complaint was docketed in that court as *James R. Moysey, Jr. v. BMR Transport, LLC and Richard B. Cook, LLC*, 21-cv-117. *Exhibit A – Complaint.*

2. Plaintiff alleges he was involved in a motor vehicle accident with an 18-wheeler operated by Defendant Richard Cook while in the course and scope of his employment with BMR Transport, LLC. *Ex. A at ¶8, 9.*

3. On or about May 6, 2021, Intervenor Crete Carrier Corp. filed its Intervenor Complaint in the Circuit of Simpson County, Mississippi, asserting a lien due to Workers' Compensation. *Exhibit B – Intervenor Complaint.*

4. The United States District Court for the Southern District of Mississippi, Northern Division, embraces the county in which the State Court Action is now pending. Therefore, removal is proper to this Court pursuant to 28 U.S.C. §§ 144(b)(1) and 1441(a).

5. As set forth below, this Court has original subject matter jurisdiction of this civil action pursuant to 28 U.S.C. §§ 1332 and 1441 because there is complete diversity of citizenship between Plaintiff and all properly joined Defendants, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Removal is Based on Diversity Jurisdiction

3. Citizenship of the parties is determined as of the time the Complaint is filed. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 571 (2004).

4. According to the Complaint, Plaintiff is a resident citizen of the State of Missouri. *Exhibit A at ¶1.*

5. BMR Transport, LLC, is a limited liability company. *Exhibit C – Declaration of Anthony Rea.* For the purposes of diversity jurisdiction, the citizenship of an LLC is determined by the citizenship of each of its members. *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 536 (5th Cir. 2017).

6. BMR Transport has one member – Anthony Rea. *Exhibit C – Declaration of Anthony Rea.*

7. Anthony Rea is a resident citizen of the State of North Carolina. *Exhibit C – Declaration of Anthony Rea.*

8. Defendant Richard B. Cook is a resident citizen of the State of North Carolina. *Exhibit A at ¶3.*

9. Intervener Plaintiff Crete Carrier Corp is a corporation. For the purposes of diversity jurisdiction, a corporation is deemed to be a citizen of every State “by which it has been incorporated and the State where it has its principal place of business.” 28 U.S.C. § 1332 (c)(1); and *Hertz Corp. v. Friend*, 559 U.S. 77 (2010) (holding principal place of business is determined by the nerve center, which is usually the corporate headquarters). Crete Carrier has its principal place of business and is incorporated in the State of Nebraska. *Exhibit D – Nebraska Secretary of State Information; Crete Carrier Website Printout with Corporate Headquarters in Lincoln, Nebraska.* Its corporate headquarters is in Nebraska. *Id.*

10. Because Plaintiff, Intervener Plaintiff and all properly joined Defendants are citizens of different States, in accordance with 28 U.S.C. §1332, complete diversity is satisfied.

Amount in Controversy

11. The amount in controversy exceeds \$75,000.00, exclusive of interests and costs. The Plaintiff does not specify an amount of damages in the Complaint. However, it is facially apparent that the amount in controversy exceeds \$75,000.00. *See, e.g., Allen v. R&H Oil & Gas Co.*, 63 F. 3d 1326 (5th Cir. 1996).

12. Plaintiff contends he suffered past, present, and future pain and suffering, medical expenses, mental anguish, lost wages, loss of wage-earning capacity, loss of enjoyment of life and other expenses. *Exhibit A* at ¶19. Plaintiff also contends he is entitled to punitive damages against both Defendants. *Id.* at ¶31.

13. Plaintiff submitted a settlement demand in the amount of \$1,000,000.00. *Exhibit E – Settlement Demand.* Plaintiff contends he has \$174,685.19 in special damages. *Id.*

14. As it is facially apparent that the amount in controversy exceeds \$75,000.00, exclusive of interests and costs, this requirement for diversity jurisdiction is met. *See* 28 U.S.C. §1332.

15. The amount of the Intervener's lien is \$10,938.65. *Exhibit B.*

16. Pursuant to 28 U.S.C. §1367(a), *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546 (2005), and its progeny, this Court has supplemental jurisdiction over the Intervener's Complaint.¹

Timeliness of Removal and Other Procedural Requirements

17. The Complaint was filed on April 1, 2021, and Cook was served with process on May 21, 2021. BMR Transport has not been served, but on June 18, 2021, BMR agreed to waive service of process.

18. This Notice of Removal, therefore, is timely filed under 28 U.S.C. §1446(b)(1) within thirty (30) days after the receipt of the initial from which Defendants could ascertain that the case is properly removable in accordance with the provisions of 28 U.S.C. §1446(b).

¹ By its terms, 28 U.S.C. §1367(b) removes supplemental jurisdiction when an intervenor plaintiff intervenes under F.R.C.P. 24. However, it does not remove supplemental jurisdiction when the intervention has already occurred under state law.

19. In accordance with 28 U.S.C. § 1447(b) and L.U.Civ.R. 5(b), a copy of the State Court Record is attached as *Exhibit F*.

20. Contemporaneously with the filing of this notice of removal, Defendant is filing a copy of the same with the Clerk of the Circuit Court of Simpson County, Mississippi, in accordance with 28 U.S.C. § 1446(d). Additionally, written notice of the removal is being given to all parties. *Id.*

WHEREFORE, Defendants BMR Transport, LLC and Richard Cook respectfully request that this Court proceed with the handling of this case as if it had been originally filed herein. Defendants also respectfully request such other relief as this Court deems just.

THIS the 16th day of July, 2021.

Respectfully submitted,

PERRIER & LACOSTE

/s/ Eric R. Price
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, the undersigned attorney for Defendants hereby certify that I have this day filed the above and foregoing Notice of Removal via ECF and upon the filing of same a true and correct copy was served via electronic filing to the following interested parties:

Graham P Carner
Graham P Carner PLLC
775 N Congress St
Jackson, MS 39202-3009

James C. Helveston
Edwards, Storey, Marshall, Helveston & Easterling, LLP
PO Box 835
West Point, MS, 39773

I, the undersigned attorney for Defendants hereby certify that I have this day filed the above and foregoing Notice of Removal via MEC in the State Court action notifying the following:

Witt Fortenberry, Clerk
Simpson County Circuit Court
Post Office Box 307
Mendenhall, MS 39114

THIS the 16th day of July, 2021.

s/ Eric R. Price
ERIC R. PRICE (MSB # 102274)